



ASSURANCE
Fair Trading Act 1987
Section 79

UNDERTAKING
Australian Consumer Law (SA)
Section 218

Assurance/Undertaking to the Commissioner for Consumer Affairs given for the purposes of s79 of the *Fair Trading Act 1987* and section 218 of the *Australian Consumer Law (SA)* by:

Mr Rami Emmanuel Yacoub Michael (ABN 58 582 633 453)
trading as Michael's Air Conditioning and Electrical Refrigeration

1. PERSONS GIVING THIS ASSURANCE

- 1.1. This Assurance is given to the Commissioner for Consumer Affairs ("the Commissioner") by Mr Rami Emmanuel Yacoub Michael trading as 'Michael's Air Conditioning and Electrical Refrigeration' (ABN 58 582 633 453) of Smithfield in the state of South Australia for the purposes of Section 79 of the *Fair Trading Act 1987* and section 218 of the *Australian Consumer Law (SA)*.

2. BACKGROUND

- 2.1. Mr Rami Emmanuel Yacoub Michael is a natural person.
- 2.2. Between September 2018 and January 2019 Mr Michael was trading as Michael's Air Conditioning and Electrical Refrigeration.
- 2.3. Mr Michael does not (and has never held) a building work contractor's licence issued under the *Building Work Contractor's Act 1995* ("the Act").
- 2.4. Section 6 of the Act prohibits a person from carrying on business as a building work contractor except as authorised by a licence under that Part.
- 2.5. Section 30 of the Act provides that a person must not demand or require a payment be made under a domestic building work contract by the person for whom work is to be performed under the contract unless the payment is of a kind authorised under the regulations.
- 2.6. Section 17 of the *Building Work Contractors Regulations 2011* authorises a payment of a deposit of not more than \$1,000 if the price stipulated on a domestic building work contract is less than \$20,000.
- 2.7. It is an offence under section 158(5) of the *Australian Consumer Law (SA)* for a person, acting in trade or commerce, to recklessly accept payment for goods or services and fail to supply those goods or services within a reasonable time.

3. CONDUCT OF CONCERN

- 3.1. Between 10 September 2018 and 16 February 2019 Mr Michael carried on business as a building work contractor by entering into contracts to supply and install ducted reverse cycle air conditioning systems at the properties of two consumers.
- 3.2. At the relevant times Mr Michael did not hold a licence authorising him to contract for building work.
- 3.3. On 14 January 2019, Mr Michael required that a payment be made under a domestic building work contract by requesting and accepting a deposit of \$1,400, the price of the contract was less than \$20,000 and in contravention of the Act and the *Building Work Contractors Regulations 2011*.
- 3.4. Between 10 September 2018 and 14 February 2019, Mr Michael accepted payments for the installation of split air conditioning systems and was reckless as to whether he would be able to supply the goods or services within a reasonable time.

4. CONTRAVENTIONS

- 4.1. The Commissioner considers, and Mr Michael acknowledges that by engaging in the conduct described in paragraph 3 above, it is likely that Mr Michael has:
 - 4.1.1. carried on business as a building work contractor whilst not authorised to do so by licence, in breach of section 6(1)(a) of the *Building Work Contractors Act 1995*.
 - 4.1.2. required that a payment be made under a domestic building work contract in breach of Section 30(1)(b) of the *Building Work Contractors Act 1995*.
 - 4.1.3. accepted payments for the installation of split air conditioning systems and was reckless as to whether the he would be able to supply the goods or services within a reasonable time in breach of section 158(5)(b)(ii) of the *Australian Consumer Law*.

5. ASSURANCE/UNDERTAKING GIVEN BY RAMI EMMANUEL YACOUB MICHAEL FOR THE PURPOSES OF SECTION 79 OF THE FAIR TRADING ACT 1987 AND SECTION 218 OF THE AUSTRALIAN CONSUMER LAW (SA)

- 5.1. In response to the concerns raised by CBS on behalf of the Commissioner, Mr Michael provides an Assurance/Undertaking to the Commissioner that he will not:
 - 5.1.1. Carry on a business as a building work contractor unless authorised by licence under the *Building Work Contractors Act 1995*;
 - 5.1.2. Not demand or require a payment be made under a domestic building work contract by the person for whom work is to be performed under the contract unless the payment is of a kind authorised under the regulations or otherwise authorised under the Act;

5.1.3. Accept payments for the installation of split air conditioning systems while being reckless as to whether the goods or services are able to be supplied within a reasonable time, in breach of section 158(5)(b)(ii) of the *Australian Consumer Law*.

6. COMMENCEMENT OF ASSURANCE/UNDERTAKING

6.1. This Assurance/Undertaking comes into effect when:

6.1.1. the Assurance/Undertaking is executed by Rami Emmanuel Yacoub Michael; and

6.1.2. the Commissioner accepts the Assurance/Undertaking so executed.

7. ACKNOWLEDGMENTS

7.1. Rami Emmanuel Yacoub Michael acknowledges that:

7.1.1. It is an offence to breach an Assurance, as set out in section 81 of the *Fair Trading Act 1987*, and the Commissioner may take action for breach of an Undertaking given under section 218 of the *Australian Consumer Law*;


7.1.2. CBS will make this Assurance/Undertaking publicly available including by publishing it on CBS' public register of Assurances & Undertakings on its website;

7.1.3. CBS will, from time to time, make public reference to the Assurance/Undertaking including in news media statements and in CBS publications;

7.1.4. This Assurance/Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and

7.1.5. This Assurance/Undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the *Fair Trading Act 1987* or the *Australian Consumer Law (SA)*.

EXECUTED BY Rami Emmanuel Yacoub Michael



Rami Emmanuel Yacoub Michael



Signature of Witness

Name: EMILIO ZOLLO

Date: 08/05/2020

Date: 08/05/2020

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to s79 of the *Fair Trading Act 1987* and section 218 of the *Australian Consumer Law (SA)*.



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Commissioner for Consumer Affairs (SA)

Date: 11/11/20